

Minutes
Rules Committee of the Commission for MH/DD/SAS
January 9, 2001

Attending:

Commission Members: Pender McElroy (Chair), Martha Martinat, George Jones, Mokie Stancil, Frederick Stell, Al Fisher and Lois Batton

Others: Art Robarge (DMH/DD/SAS), Sherry Harrison (DMH/DD/SAS), Bill Warren (DFS), Fran Pedrigi (DFS), Mary Eldridge (DMH/DD/SAS), Joan Kaye (DMH/DD/SAS), Michelle Cotton (DMH/DD/SAS), Cindy Kornegay (DMH/DD/SAS), Marilyn Brothers (DMH/DD/SAS), Stephanie Alexander (DMH/DD/SAS), Sue Creighton, (DMH/DD/SAS), Johnny Womble (DMH/DD/SAS), Jim Jarrard (DMH/DD/SAS), Carol Duncan Clayton (Area Program Council), and Tara Larson (Staff to the Committee).

Discussion:

Chairperson Pender McElroy opened the meeting, and attendees were introduced.

Mr. McElroy provided an update of the Legislative Oversight Governance Subcommittee. The Committee has presented a model that moves to the county model as discussed in the PCG report and also does away with Boards as currently structured under 122c. The role of the Commission has been discussed and the suggestion made that examination of rule making authority is needed in order to clear up the “gray areas”. The next meeting is scheduled for January 16th at 10:00 a.m. Draft legislation is scheduled for the January 16th agenda. The Subcommittee report will be forwarded to the full Legislative Oversight Committee for adoption.

Rep. Insko and Dr. Alice Lin presented at the Coalition 2001 meeting on January 8th and discussed the proposed model as previously presented at the Governance Subcommittee. They did discuss the change from 122c to 122d as a transition step as the new system is implemented.

Funding for the system is a critical point that should not be ignored for any model. The Finance Subcommittee is meeting on Thursday, January 11th and is charged with looking at the financing of the system.

Division of Facility Services (DFS) Presentation by Bill Warren and Fran Pedrigi

Bill Warren, Chief of DFS Construction Section, presented an overview about physical plant, construction and programmatic requirements related to licensure. Additional staff have been added both to the construction and licensure sections of DFS. Given the new staffing, on site reviews are done in place of only desk reviews. Equivalency rules have been implemented as a way to have the safety needs met without meeting the specific requirements of the rules. Once construction is approved, the approval letter is sent to Jeff Horton’s section for processing of the application for programmatic review. Facilities that are already in operation are also undergoing on site reviews for the existing 3200 licensed facilities under 122C.

Annual fire and sanitation inspections are required for ongoing licensure. There are concerns about the training of those inspectors given the unique needs of the population served in mh/dd/sa facilities. The on site inspections are finding issues, now that reviews are happening. DFS staff also are available to provide consultations to facilities and providers in order to meet licensure status.

The role between DFS and DMH is currently being examined as it relates to monitoring, accreditation and licensure. The processes do have overlap. Area Programs are also a factor in the role of reviewing of the licensed providers. Most of the overlap is in the programmatic areas and not as much in the construction/physical plant issues.

New facilities require air conditioning but existing facilities that were licensed prior to 1988 do not. Members of the Committee have expressed concerns about the ventilation conditions in the facilities. As discussed, there are certain areas of the state that do need air conditioning as frequently as other parts of the state and in these situations, there may be a need to grant an equivalency rule. Current rule .0300 addresses heating and air-conditioning rules and some members of the committee discussed the need to change the current rule. Lack of complaints does not mean that there are no problems. Staff are requested to bring to the next meeting capacity of facility, initial date of licensure prior to Oct 1, 1988, county and type, as the first step to determining the magnitude of the problem.

ADA requirements are problematic for enforcing. The state's laws are the processes for meeting ADA requirements, but there are unclear mandates. The Committee will be kept informed about changes or interpretations as needed as it relates to assuring that the physical plant requirements are in place to meet client safety and to implement programmatic/clinical plans.

Controlled Substance, Dihydroetorphine presentation by John Womble

John Womble presented the need to add the drug Dihydroetorphine as a controlled drug. The Federal Register has published the intent of adding the drug, and NC must act accordingly. Lois Batton made a motion to add this drug to the Schedule II list of controlled drugs; Martha Marinant seconded the motion, which passed unanimously. This motion to be presented at the February Commission meeting.

Seclusion and Restraint rules presentation by Mary Eldridge

The temporary rules will be published in the Register next week. A memo has been distributed to the several thousand providers for information about the rule. Joan Kaye/Mary Eldridge distributed a memo to DMH/DD/SAS Executive Staff and State Facility staff in order to assist in the planning for training of the providers. The law and rules went into effect January 1, 2001 and the training rules are effective February 1, 2001. The fiscal note has been completed and will have an impact. Recent Medicaid rate recommendations for child residential has taken into account the new rules as part of the justification for the rate increases. The Commission and Rules Committee will get the final draft of the rules and fiscal impact before rules are made permanent.

Client Rights and Human Rights Rules are also under consideration/review for combining the two sets. Stricter requirements are currently required in the state facilities than in the community facilities. The Division staff does recommend that we address the “nonlicensed” facilities and periodic services and not just residential facilities when client rights rules are revised or discussed. The work group does not intend to recommend rules unless they are going to be monitored and actually improve client care. The community is treating more complex individuals and the rules need to build a system that protects the client.

The Division staff is requesting that the Rules Committee support the combination of Human Rights and Client Rights rules group moving forward in examination/review of the rules. Al Fisher made a motion, and Freddie Stell seconded, that that the work group moved forward with the process. The motion passed unanimously. A progress report will be made at the April Rules Committee meeting, and tentative presentation of the rules to be made in August.

Child Residential Rules presented by Tara Larson

Tara Larson presented an overview of a work group co-chaired by Chuck Harris, DSS Chief of Child and Family Services and her. The group will examine the current child residential licensure categories under 122C, possible establishment of a new licensure category of Psychiatric Residential Treatment Facility (PRTF) and crosswalk of 131D child licensure requirement. The group is comprised of providers, area programs, DFS staff, DSS staff (state and local) and other interested parties. The plan is to present temporary rules (as authorized by the legislation) at the April meeting and implementation, if passed, in July 2001.

No action is required by the Rules Committee at this time.

DDA Group Home change in licensure from 131D to 122C presentation by Sue Creighton

Historically, DDA Group Homes are licensed as 131D. Currently, the state is examining the need to move these homes to 122C licensure. A special provision is being considered for presentation during the Legislative Session to move these homes to Supervised Living. Special Assistance payments would continue to be allowed to the consumers. The special provision would need to be passed before the rule recommendations are brought to the Committee.

No action is required by the Rules Committee at this time.

Other Business

The Rule Tracking Form was distributed for information to the Committee. This form will be distributed at each meeting. This tracking process has been put in place to assure that timelines are met in rule processing.

When a temporary rule is reviewed and enacted, more review and revisions can occur prior to the rule being made permanent. The Division has drafted a policy for rule

making which outlines the timelines and procedures for writing, distributing, receiving input, etc., of either a temporary or permanent rule. The policy is currently under internal review by Division staff and has not yet been presented or approved by DMH/DD/SAS Management staff. The policy will be distributed to Committee members.

The Medical Records Manual is not in rule but are policy. Staff recommends that Committee members not recommend that record documentation be placed in rule due to the time requirements associated with rule making. Staff are addressing the reduction of requirements in the current service records manual and are using COA, JACHO and federal Medicaid requirements as the bases of the review. Upon internal review, the draft will be distributed for a broader review. Target date for implementation is July 1, but this date will need to be coordinated with other Department and HIPPA requirements.

COA offers up to 4 years of accreditation, but the current DMH/DD/SAS Rules allow only for a maximum of 3 years accreditation as outline in section .0600. Floyd McCollugh made a motion, and Freddie Stell seconded, that staff reviews the recommendation of changing the maximum number of accreditation to 4 years, instead of 3 years. The motion passed unanimously. Staff will report on the recommendation at the April Rules meeting.

Sherry Harrison provided an update on Dix Hospital. The day care has opened. The Hospital Services Section is examining the nursing shortage and the staffing patterns in all the hospitals. Staff are examining the possibility of providing incentives to HCT, LPNs to become RNs. The Division is working with State Personnel in expediting the hiring process, and they are being very helpful in the process.

Staff will provide a list of recommendations, such as Nurse Incentives, that Commission members can use to talk with Legislators.

Dr. Art Robarge provided an update of other Division actions, including a request for patient furnishings as a part of the savings of Dix Hospital. This request has been submitted on the Division's critical needs list.

Dr. Robarge reiterated the Division's commitment to discuss with the Rules Committee proposed Secretary's rules and Commission rules.

Direct enrollment of private practitioners goes into effect February 1st. The Division supports the direct enrollment of private practitioners but also thinks that the provider should be subject to best practices of their professional licensure. This item is currently under debate and is receiving much discussion in the service community.

Rule meetings are scheduled for April 10th, July 10th, October 9th. All the meetings will be held at the Four Points Hotel, Raleigh and will begin at 10:00 a.m. The next Commission meeting will be held on Feb. 12th at the Brownstone Inn, Raleigh.

Minutes respectfully submitted by Tara Larson.